

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS JOHN WESTON OSBURN

(b) County of Residence of First Listed Plaintiff Mendocino

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Dennis Cunningham, 915 285 8091
115A Bartlett St. San Francisco, CA 94109DEFENDANTS OAKLAND POLICE OFFICERS:
Sgt. B. Ortiz (#8132P); Sgt. J. Cunniff (#8754P);
St. Hamilton (#UNK); Sgts. Jane & John
POs Nos. 1X AND THE CITY OF OAKLAND
County of Residence of First Listed DefendantNOTE: (IN U.S. PLAINTIFF CASES ONLY)
CV 12-397
IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

OAK CITY ATTY # MEJ
JOHN BURBER

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---------------------------------------|---|----------------------------|
| PTF | DEF | PTF | DEF |
| <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business In This State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | | Incorporated and Principal Place of Business In Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC sec. 1983

Brief description of cause:

Police Misconduct

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE 6/29/12

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

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Attorneys for the Plaintiff

FILED
JUN 29 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOHN WESTON OSBURN,

Plaintiff,

CV No. 12 3397

**COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS and OTHER WRONGS**

MEJ

vs.

Jury Trial Demanded

OAKLAND POLICE OFFICERS:
Sgt. B. ORTIZ, #8132P; Ofcr J. CUNNIE,
#8754P; Lieut. (fnu) HAMILTON, #unk;
Officers John & Jane Doe, Nos.1-X; and
The CITY of OAKLAND, California,

Defendants.

INTRODUCTION

1. This is a Complaint for violation of civil rights by way of false arrest, wrongful use of force and wrongful imprisonment, in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution, and unconstitutional policy and practice on the part of the Oakland Police Department, implicating the City itself. It arises from the wrongful and arbitrary seizure and rough physical punishment of plaintiff by the defendant officers, on July 8, 2010, gratuitously and heedlessly interrupting him as he pursued his professional calling and assignment as photo-

1 journalist and film-maker, filming a developing confrontation between police and demonstrators
2 in downtown Oakland, on the occasion of protests over the whitewash verdict exonerating the
3 BART policeman Johannes Mehserle in the New Year's Eve, 2008, killing of Oscar Grant on a
4 BART platform.

5 2. As a result of this gratuitous mayhem, clearly carried out 'maliciously and sadistically
6 for the very purpose of causing harm, the plaintiff has suffered long-lasting injury to his wrist,
7 impairing his ability to handle his cameras, and thereby compromising his ability to earn his
8 living and pursue his calling and his art, all in violation of his fundamental rights under the
9 United States Constitution.

10 **JURISDICTION & VENUE**

11 3. This Court has jurisdiction based on the U.S. Constitution by way of the Civil Rights
12 Acts, 42 U.S.C. Sec.1983 *et seq.* Venue is proper in this Court because some parties reside or are
13 employed in the County and the events in question occurred here.

14 **PARTIES**

15 4. **Plaintiff.** Plaintiff JOHN WESTON OSBURN is an adult citizen of the United States
16 and the State of California and a resident of Mendicino County, California

17 5. **Defendants.** Defendants, Sgt. B. ORTIZ, #8132P, Ofcr J. CUNNIE, #8754P, and
18 Lieut. (fnu) HAMILTON, #unk, are members of the Oakland Police Department, who acted
19 together with others who participated in the assault and false arrest of the plaintiff, and other
20 responsible supervisors and commanders, all named here as John Does, whose true names will by
21 incorporated herein when they become known.

22 **STATEMENT OF FACTS.**

23 6. Plaintiff is a news reporter and documentary film maker associated at the time with the
24 IndyBay on-line news organization, and on assignment covering the demonstration anticipated
25 for the day when the verdict would be announced at the trial in Los Angeles of Johannes
26 Mehserle, a former BART police officer indicted for murder in the New Years Eve, 2008, BART
27 platform shooting of Oscar Grant Jr, while he lay prone on the ground, handcuffed. The case had
28 caused a great deal of ferment in the community, and more was expected on this night.

1 7. At a certain point in the protest, while a peaceful crowd rallied in a blocked-off section
2 of Broadway, between 13th and 14th Streets, riot police began to advance on the crowd, despite its
3 peaceful demeanor, and the plaintiff, stationed roughly to the side of the shrinking open space
4 between the two groups, began filming the police advance. As he did so, video camera in one
5 hand and a still camera in the other, he saw a police field commander clearly pointing at him, the
6 plaintiff, and apparently instructing officers to go after him, which they did.

7 8. The officers, Ofc. Cunnie and Sgt. Ortiz in particular (others being unidentified, and
8 so named herein as John and Jane Does), immediately surrounded the plaintiff and grabbed him,
9 taking him violently to the ground despite his lack of any resistance, and attempt to cooperate;
10 whereupon they twisted his arms behind him, seriously injuring his wrist, and then handcuffed
11 him much to tightly, 'maliciously and sadistically, for the very purpose of causing harm', which
12 they did.

13 9. After a stop at a hospital, where his wrist was seen only briefly, the defendants caused
14 the plaintiff to be transported to the City Jail, where they lodged false charges of attempted arson
15 against him, knowing he had committed no such offense, but that the seriousness of the charge
16 would cause him to be held in jail, illegally, rather than released; which he was, for five days
17 before being released. Other, different charges later filed against him were ultimately dropped.

18 10. The officers confiscated his cameras, and when he finally retrieved them, the tape in
19 the video camera had clearly been tampered with by defendants, and a portion or portions of it
20 deleted. His wrist, in the area where the officers twisted it deliberately to hurt him, was in pain,
21 and his use of it greatly impaired, for many weeks after the incident, and still not fully
22 healed—and apparently may not ever heal—almost two years later.

23 **PLAINTIFF'S CAUSES OF ACTION.**

24 **One. Violation of Civil and Constitutional Rights: Unreasonable Seizure.** The
25 violent, totally unprovoked and unjustified assault on the plaintiff described above, together with
26 his (false) arrest and forcible handcuffing on no legal grounds whatsoever, violated his
27 fundamental rights under the Fourth Amendment to the U.S. Constitution, entitling him to
28 Judgment against defendants for compensatory damages.

1 **Two. Violation of Civil and Constitutional Rights: Personal Liberty; Freedom of**
 2 **Speech, Association and Movement; and Privacy.** The actions of all the defendants, in
 3 assaulting and arresting the plaintiff arbitrarily and without cause or justification, and punishing
 4 and retaliating against him physically, were aimed at suppressing his reportorial efforts,
 5 punishing him for them, and covering up the gratuitous, unconstitutional violence of the police
 6 against the peaceful protesters by blocking his coverage. These actions by defendants likewise
 7 deprived plaintiff of fundamental rights under the Firts Amendment, also entitling him to
 8 judgment against the defendants, and damages.

9 **Three. Denial of Due Process.** False charges of attempted arson lodged against plaintiff
 10 by defendants without grounds, and intended to result in high bail and extended imprisonment
 11 following the arrest, violated plaintiff's rights denied the plaintiff Due Process of Law and
 12 deprived him of privileges and immunities guaranteed by the Fourteenth Amendment.

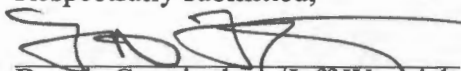
13 **Four. Punitive Damages.** The afore-described acts of the defendants who manhandled,
 14 injured and humiliated the plaintiff, and cut off his legitimate expressive activity and reporting,
 15 then had him booked on false charges so he would remain in jail, were knowingly malicious and
 16 oppressive in the extreme, and taken with reckless and callous indifference to his basic civil
 17 rights, entitling the plaintiff to judgment against them and each of them for punitive damages,
 18 according to law.

19 **PRAYER FOR RELIEF.**

20 WHEREFORE, the plaintiff demands Trial By Jury on each of his claims herein, and
 21 Judgment against all defendants found to have participated in violating his rights and otherwise
 22 injuring him, for compensatory damages in such amount as the Jury shall see fit to award; and for
 23 punitive damages against those who injured him maliciously and oppressively, also as the Jury
 24 sees fit; and for the costs and expenses of suit, attorney's fees according to law, and such other
 25 relief as may be deemed just and appropriate in the premises.

26 DATED: June 18, 2012.

Respectfully submitted,

27 
 28 Dennis Cunningham/Leff Wozniak
 Attorneys for Plaintiff